Supreme Court, U.S.
FILED

03 477 AUG 14 2003

OFFICE OF THE CLERK

Docket No. _____

SUPREME COURT OF THE UNITED STATES

QUENTIN LANIER SAVAGE,

PETITIONER

VS.

STATE OF ALABAMA,

RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI FROM THE ALABAMA SUPREME COURT
Docket No. 1021010

PETITION FOR WRIT OF CERTIORARI

John A. Bivens, P.C.
Attorney for the Petitioner
2616 8th Street
Tuscaloosa, AL 35401
(205) 759-5401

29 pp

QUESTIONS PRESENTED FOR REVIEW

I. WHETHER QUENTIN SAVAGE WAS DEPRIVED OF DUE PROCESS BY THE ALABAMA APPELLATE COURTS RELIANCE ON THE UNCORROBORATED TESTIMONY OF ONE OF THE ARRESTING OFFICERS?

II. WHETHER QUENTIN SAVAGE WAS DEPRIVED OF HIS FOURTH AMENDMENT RIGHT TO BE SAFE FROM UNREASONABLE SEARCHES AND SEIZURES DUE TO NATURE OF THE PRETEXTUAL STOP?

III. WHETHER QUENTIN SAVAGE WAS DEPRIVED OF HIS FOURTH AMENDMENT RIGHT BY THE COURTS REFUSAL TO EXCLUDE OTHER EVIDENCE AS FRUITS OF THE POISONED TREE?

TABLE OF CONTENTS

Questions Presented i
Table of Cited Authorities iii
Opinions Below 1
Statement of Jurisdict 1
Constitutional Provisions and Statutes Involved..... 1
Statement of the Case 1
Argument..... 3
Appendix..... 8

TABLE OF CITED AUTHORITIES

Florida v. Royer, 460 U.S. 491, 500 1983)..... 5

Horton v. California, 496 U.S. 128 (1990) 5

In Raettig v. State, 406 So.2d 1273 (Fla. App. 1981) 6

Johnson v. Nagle, 58 F.Supp.2d 1303 (N.D.Ala. 1999) .. 3

Mapp v. Ohio, 367 U.S. 643 (1961) 6

Minnesota v. Dickerson, 508 U.S. 366 (1993) 5

Sandoval v. Hagan, 7 F.Supp.2d 1234, (M.D.Ala. 1998) .. 3

U.S. v. Dunn, 480 U.S. 294 (1987) 6

U.S. v. Pruitt, 174 F.3d. 1215 (C.A.11 1999) 6

U.S. v. Reese, 108 F.Supp.2d 1338 (M.D.Ala. 2000) 4

U.S. v. Ross, 877 F.Supp. 711 3

Waldrop v. Thigpen, 857 F.Supp. 872, (N.D.Ala. 1994) ... 6

Fourteenth Amendment 1, 6

Fourth Amendment 1, 4, 6

Rule 13,
Rules of the Supreme Court of the United States 1

§13A-12-212, Ala. Code 1975 2

§13A-12-231, Ala. Code 1975 1

28 U.S.C. § 1257(a) 1

OPINIONS BELOW

The opinions below are identified in the Appendix.

STATEMENT OF JURISDICTION

On May 16, 2003, the Alabama Supreme Court denied Quentin Savage's petition for writ of certiorari. This petition is being filed within ninety (90) days from the date of the Alabama Supreme Court's decision; thus, it is timely under Rule 13 of the Rules of the Supreme Court of the United States. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case presents issues involving the Fourth and Fourteenth Amendments to the United States Constitution.

The Fourth Amendment to the Constitution provides: "The right of the people to be secure in their persons, homes, papers, and effects, against unreasonable searches and seizures."

The Fourteenth Amendment to the Constitution provides: "nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

On April 14, 2000, Petitioner was indicted for Trafficking in Cocaine, a violation of §13A-12-231, Ala.

Code 1975; Trafficking in Marijuana, a violation of §13A-12-231, Ala. Code 1975; and Possession of a Controlled Substance, a violation of §13A-12-212, Ala. Code 1975.

On June 7, 2000, Petitioner filed a Motion to Suppress Evidence asserting as grounds that the search was without probable cause and "unlawful under Alabama and federal law."

On September 5, 2000, in the Tuscaloosa County Circuit Court, Petitioner's Motion to Suppress Evidence was denied.

On October 5, 2000, Petitioner filed his Motion for Rehearing of the Motion to Suppress. The Motion for Rehearing was overruled and denied on October 6, 2000.

On June 8, 2001, Petitioner filed his Motion to Suppress Evidence and Statements resulting from the search of his home. This motion was overruled and denied on July 31, 2001.

Petitioner filed a Motion for New Trial and Reconsideration of the Court's Overruling of the Motion to Suppress Evidence and Statements on August 10, 2001. On August 13, 2001, the Court overruled the Motion for Reconsideration and denied the Motion for New Trial on the basis that there had been no trial.

Petitioner entered a guilty plea on December 4, 2001. As a part of the plea agreement, the Possession of a Controlled Substance charge was dismissed and Petitioner reserved the right to appeal his case on the issues of Suppression of evidence and statements.

On February 12, 2002, Petitioner was sentenced to ten years for each of the remaining two charges, which were to run concurrently. On the same day, Petitioner filed a Motion for New Trial. The Motion for New Trial was denied on April 12, 2002.

On April 18, 2002, Petitioner filed a notice of Appeal. On January 7, 2003, the Alabama Court of Criminal Appeals

affirmed the decision of the trial court, finding "no abuse of discretion with the trial court's denial of Savage's motion to suppress."

Petitioner's Application for Rehearing was filed on January 21, 2003 and overruled on March 7, 2003.

On March 20, 2003, Petitioner filed a Petition for Writ of Certiorari to the Alabama Supreme Court. Petitioner's writ was denied on May 16, 2003.

ARGUMENT

I. WHETHER QUENTIN SAVAGE WAS DEPRIVED OF DUE PROCESS BY THE ALABAMA APPELLATE COURTS BY THEIR STRICT RELIANCE ON ONLY THE UNCORROBORATED TESTIMONY OF ONE OF THE ARRESTING OFFICERS?

The Due Process Clause requires the state to prove each element of an offense beyond a reasonable doubt. Johnson v. Nagle, 58 F.Supp.2d 1303 (N.D.Ala. 1999). In the case of a warrantless search, after the party seeking to exclude evidence has established grounds that the seizure was illegal, the state must then prove, by a preponderance of evidence, that the seizure of evidence was legally and factually justified. U.S. v. Ross, 877 F.Supp. 711. "Preponderance of evidence" is such evidence that "when considered with that opposed to it, has more convincing force, and demonstrates that what is sought to be proved is more likely true than not." Sandoval v. Hagan, 7 F.Supp.2d 1234, (M.D.Ala. 1998). Petitioner argues that the Appellate courts failed to require the State to meet its burden. There was no preponderance of evidence in favor of the state, nor was the seizure of evidence legally or factually justified.

The Alabama Appellate courts failed by accepting the testimony of Trooper Greene as valid, although

uncorroborated, contrary to any objective view of the evidence or the circumstances surrounding the assertion of the "plain view" exception. Because Petitioner's testimony conflicted with the testimony of Trooper Greene, the Appellate Court should have required the corroboration of Trooper Greene's testimony by the other officer, Trooper Lewis, who was helping with the license and equipment check. Trooper Lewis walked along the side of the truck to check the tag, therefore being better able to see into the back of the truck. Even though Trooper Lewis would have had the better advantage of seeing what was inside the bed of the truck, Trooper Greene was the only one to testify as to what he observed in "plain view" in the back of the truck.

Corroboration by Trooper Lewis would have given Trooper Greene's testimony more "convincing force." Corroboration is essential in this case because crimes are seldom committed in the presence of an officer. An officer, therefore, must have the testimony of the other officer-witness, just as he is required to verify probable cause from factors which indicate criminal activity. Here, the state did not prove that the seizure of evidence was legally and factually justified by a preponderance of the evidence. By not requiring the state to sufficiently meet its burden, the Appellate courts have deprived Petitioner of his due process rights.

II. WHETHER QUENTIN SAVAGE WAS DEPRIVED OF HIS FOURTH AMENDMENT RIGHT TO BE SAFE FROM UNREASONABLE SEARCHES AND SEIZURES DUE TO NATURE OF THE PRETEXTUAL STOP?

It is recognized that police officers may set up roadblocks for the purposes of doing license, insurance, and equipment checks, without violating the Fourth Amendment. However, these roadblocks must be performed indiscriminately and the officers can not exceed the

permissible scope of the stop. U.S. v. Reese, 108 F.Supp.2d 1338 (M.D.Ala. 2000). If the officer exceeds the scope of the stop, the burden will be on the State to demonstrate that the stop was "sufficiently limited in scope and duration to satisfy the conditions of an investigative seizure." Florida v. Royer, 460 U.S. 491, 500 (1983). Instead of showing that the detention was limited, the State bases its case on the allegation that the evidence was in "plain view."

Petitioner contends that the purpose of the roadblock in this case was not merely to do license and equipment checks. Troopers sought to use the license and equipment check point as an opportunity to search unsuspecting citizens and invade their privacy. This is evidence by the fact that the seizure did not occur until after the check was over and one of the officers said that the Petitioner could leave. Trooper Lewis walked along side the truck, while Trooper Greene checked for valid licenses. There was no reason for Trooper Greene check the contents of the truck's bed. Trooper Greene was further intrusive by shining his light into the plastic bags. Trooper Greene exceeded the scope of his authorization to set up the roadblock, which was to do "license and equipment checks." He went beyond his authorization by searching for "other violations of the law" after he stopped Petitioner.

If the Court finds that the officers did not exceed the scope of their authorization for the roadblock, the Appellate courts still erred in their application of the "plain view" doctrine. The plain view doctrine permits a warrantless seizure of evidence if the seizing officer has prior justification for the intrusion and immediately recognizes the objects discovered as objects of wrongdoing. Horton v. California, 496 U.S. 128 (1990). Minnesota v. Dickerson, 508 U.S. 366 (1993).

In order to meet the plain view standard, Trooper Greene must have immediately recognized the contents in the bags to be marijuana once he shined his light on them.

Petitioner argues that this did not occur. At the suppression hearing, Trooper Greene stated that the marijuana was in clear bags that were inside of brown plastic bags. Petitioner asserts that Trooper Greene did not immediately recognize the marijuana because it was nit only was it in the brown plastic bags, but there was also money placed on top it.

Petitioner concedes that the police officer's view may be enhanced by electrical or mechanical means, such as flashlights or binoculars. U.S. v. Dunn, 480 U.S. 294 (1987). However, if the purpose of the enhanced device is to view that which could not be seen without it, it could very well be a constitutional invasion. In Raettig v. State, 406 So.2d 1273 (Fla. App. 1981). Trooper Greene alleges that he shined his flashlights on the back of Petitioner's truck and saw marijuana packaged in clear bags inside of a brown plastic bag. Petitioner, however, argues that Trooper Greene picked up the bag, opened it up, and removed money from the top of it to see what was inside of it. There were pictures of the bags submitted into evidence at the suppression hearing that tends to support Petitioner's story.

III. WHETHER QUENTIN SAVAGE WAS DEPRIVED OF HIS FOURTH AMENDMENT RIGHT BY THE COURTS REFUSAL TO EXCLUDE OTHER EVIDENCE AS FRUITS OF THE POISONED TREE?

The Fourth Amendment exclusionary rule states that evidence seized by federal, state, county or local law enforcement in violation of the provisions of the Fourth Amendment will be excluded from trial because to admit such evidence violates the due process clause of the Fourteenth Amendment. Mapp v. Ohio, 367 U.S. 643 (1961). Evidence acquired either directly or indirectly as result of illegal seizure or arrest is not admissible in criminal proceedings against victim of seizure as proof of guilt. Waldrop v. Thigpen, 857 F.Supp. 872, (N.D.Ala. 1994).

U.S. v. Pruitt, 174 F.3d. 1215 (C.A.11 (Ala.) 1999). The exclusionary rule is designed to deter police misconduct.

After arresting Petitioner for the marijuana found in his truck, officers searched the his home. Petitioner argues that because the officers exceeded the scope of their authority for stopping him, the Court must exclude the evidence resulting form the search of the person and automobile of the Defendant. Furthermore, if the Court finds that the stop was not illegal, the officers still did not meet the requirements of the plain view exception. The evidence was not immediately apparent to the officer, therefore all of the actions of the Officer thereafter, constitute the illegal and improper "fruits of the poisoned tree" and therefore are inadmissible.

RESPECTFULLY SUBMITTED this the 22nd day of **September, 2003**.

JOHN A. BIVENS, P. C.

John A. Bivens (BIV002)
Attorney for the Petitioner
2616 8th St.
Tuscaloosa, AL 35401
(205) 759-5401

APPENDIX

1. Certificate of Judgment-Alabama Supreme Court- May 16, 2003 9

2. Order from the Alabama Court of Criminal Appeals-March 7, 2003 10

3. Order from Alabama Court of Criminal Appeals Affirming Trials Court's Denial of Motion to Suppress and Conviction-Released January 7, 2003 12

IN THE SUPREME COURT OF ALABAMA

May 16, 2003

1021010

Ex Parte Quentin Savage. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS (In re: Quentin Lamar Savage v. State of Alabama) (Tuscaloosa Circuit Court: CC-00-0528; Criminal Appeals: CR-01-1493).

CERTIFICATE OF JUDGMENT

Writ Denied

The above cause having been duly submitted, IT IS CONSIDERED AND ORDERED that the petition for writ of certiorari is denied. COST TAXED TO PETITIONER.

Writ denied – No Opinion

BROWN, J. – Moore, C.J., and See, Harwood, and Stuart, J.J., concur.

I, Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 16th day of May, 2003.

Robert G. Esdale, Sr.

Clerk, Supreme Court of Alabama

Court of Criminal Appeals

State of Alabama

Judicial Building, 300 Dexter Avenue

P.O. Box 301555

Montgomery, AL 36130-1555

H.W. "BUCKY" MCMILLIAN	Lane W. Mann
Presiding Judge	Clerk
SUE BELL COBB	Wanda K. Ivey
PAMELA W. BASCHAB	Assistant Clerk
GREG SHAW	(334) 242-4590
A. KELLI WISE	FAX (334) 242-4689
Judges	

Hon. Doris T. Turner, Circuit Clerk

Hon. Yvonne A.H. Saxon, Asst. Atty. Gen.

Hon. John Alan Bivens, Attorney

RE: CR-01-1493

Quentin Lanier Savage v. State of Alabama (Appeal from Tuscaloosa Circuit Court: CC00-0528).

Dear Sir or Madam:

You are hereby notified that on March 7th, 2003 the following action was taken in the above referenced cause by the Court of Criminal Appeals:

Application for rehearing overruled.

Lane W. Mann

Clerk

Court of Criminal Appeals
LWM/jz

NOTE: If you are filing a petition for certiorari with the Alabama Supreme Court, Rule 39(e), Alabama Rules of Appellate Procedure, states that a copy of the petition shall be filed with this Court. Please be advised that your failure to comply with this requirement could result in the issuance of a premature Certificate of Judgment.

Court of Criminal Appeals
State of Alabama
Judicial Building, 300 Dexter Avenue
P.O. Box 301555
Montgomery, AL 36130-1555

RELEASED JAN 7, 2003

H.W. "BUCKY" McMILLAN
Presiding Judge
SUE BELL COBB
PAMELA W. BASCHAB
GREG SHAW
A. KELLI WISE

Lane W. Mann
Clerk
Wanda K. Ivey
Assistant Clerk
(334) 242-4590
Fax (334) 242-4689

MEMORANDUM

CR-01-1493 Tuscaloosa Circuit Court CC-2000-528

Quentin Lamar Savage v. State

COBB, Judge.

Quentin Lamar Savage was indicted for trafficking in cocaine, a violation of § 13A-12-231, Ala. Code 1975, trafficking in marijuana, a violation of § 13A-12-231, Ala. Code 1975, and possession of cocaine, a violation of § 13A-12-212, Ala. Code 1975. Savage filed a motion to suppress the marijuana and cocaine. After a hearing, the trial court denied Savage's motion to suppress. After the denial of his motion to suppress, Savage entered a plea agreement with the State. Pursuant to the plea agreement, Savage waived further proceedings and entered into a stipulation of facts with the prosecutor based on previous proceedings. Savage also reserved the right to appeal the denial of his motion to suppress. Accepting Savage's motion and the stipulation of the facts, the trial court found Savage guilty of trafficking in cocaine and marijuana. Pursuant to the plea agreement, the

possession of cocaine charge was dismissed. He was sentenced to ten years' imprisonment for each count of trafficking. These sentences were to run concurrently. He was ordered to pay a $50 crime victim's assessment, $1,000 pursuant to the Drug Assessment Act, $100 for the Forensic Trust Fund, a $25,000 fine, and his driver's license was suspended for six months. This appeal followed.

Conflicting evidence was presented at the hearing on the motion to suppress. Trooper David Green III, an Alabama State Trooper, testified that on the night of February 8, 2000, he and Trooper Ray Lewis were conducting a driver's license and equipment check at an intersection on Jug Factory Road in Tuscaloosa, Alabama. Savage's truck was stopped at the checkpoint. However, the truck rolled past the officers before it came to a complete stop. Thus, when the truck stopped, Trooper Green and Lewis were standing at the bed of the truck. Trooper Green testified that, with the use of a flashlight, he observed, in the bed of Savage's truck, a leafy material contained inside several clear plastic bags which were protruding from a brown plastic grocery bag. Trooper Green testified that based on his experience he knew that he and Trooper Lewis saw "several bags, plastic bags that were containing what we believed to be marijuana." (R. 12.) Trooper Green ordered Savage to step out of his vehicle. Savage was arrested for the possession of marijuana. A search of the truck incident to Savage's arrest revealed a plastic bag containing cocaine.

Savage testified at the suppression hearing that he pulled up to the checkpoint and gave Trooper Green his driver's license. Trooper Lewis went to the rear of the truck. Savage testified that Trooper Lewis told Trooper Green that Savage was good to go. When Savage reached to get his license, Trooper Green asked him why he was in such a rush. Trooper Green then went to the bed of the truck and asked what was in the bag. Savage testified that he heard a bag rattling. Savage looked in his rearview mirror and saw Trooper Green holding the brown, plastic bag up in the air.

Savage testified that Trooper Green pulled money out[1] of the bag and then saw the marijuana. Trooper Green then asked him to step out of the vehicle.

Savage argued at the suppression hearing that it was improper to detain and search his vehicle after the checkpoint activities were completed, that the marijuana was not in plain view, and that the cocaine found in the vehicle should have been suppressed as fruit of the poisonous tree. The trial court denied Savage's motion to suppress, ruling that "the marijuana was in plain view, therefore, the officers were justified in seizing the marijuana." (R. 120.)

Savage contends on appeal that the trial court erred in denying his motion to suppress because: the driver's license checkpoint was a pretext to search Savage's automobile as evidenced by the officer's conduct at the checkpoint exceeding what was appropriate for a license and equipment check; the marijuana seized from the bed of his truck was not in plain view as alleged by the arresting officers; and the cocaine seized from the vehicle should have been suppressed as fruit of the poisonous tree.

"[A] trial court's ruling based upon conflicting evidence given at a suppression hearing is binding on this court . . . and is not to be reversed absent a clear abuse of discretion [.]" Jackson v. State, 589 So. 2d 781, 784 (Ala. Crim. App. 1991) (citations omitted).

Savage argues that the driver's license checkpoint was a pretext to search for marijuana in his truck. This issue is not preserved for review. Savage did not challenge the validity of the checkpoint at trial. An objection on specific grounds waives all other grounds not specified and the trial court will not be put in error for grounds not assigned at trial. Glass v. State, 671 So. 2d 114 (Ala. Crim. App. 1995), overruled on other grounds by Ex parte Gentry, 689 So. 2d 916 (Ala. 1996). New grounds raised on appeal are not

---

[1] The money removed from the brown plastic bag is not relevant to the issues on appeal.

properly before this court. McKinney v. State, 654 So. 2d 95 (Ala. Crim. App. 1995).

Moreover, the record does not support the contention that the checkpoint was a pretext to search for drugs. The officers testified that the proper procedure was followed in setting up the checkpoint and pursuant to policy, every passing automobile was stopped. Nothing in the record suggest that the checkpoint was a subterfuge for an illegal search or disputes that the officers were conducting a valid, routine checkpoint for driver's licenses and equipment. See Cains v. State, 555 So. 2d 290 (Ala. Crim. App. 1989) (stops at fixed roadblocks are reasonable if they are carried out pursuant to a neutral and objective plan, are supported by a strong public interest, and are only minimally intrusive to the individual motorist).

Savage contends that the marijuana seized from the bed of his truck was not in plain view and that the officers rifled through the brown plastic bag to find the marijuana. Thus, according to Savage, the officers' conduct at the checkpoint exceeded what was appropriate at a license and equipment check and the seizure of the marijuana from the bed of his truck was illegal under the Fourth Amendment to the United States Constitution. After hearing the evidence presented at the hearing on the motion to suppress, the trial court ruled that the marijuana was in plain view and thus, denied the motion to suppress. "'[A]bsent clear error, the trial court's credibility choices on issues of fact at suppression hearings are binding on this Court. Powell v. State, 624 So. 2d 220 (Ala. Cr. App. 1993).' State v. Hill, 690 So. 2d 1201, 1204 (Ala. 1996), on remand, 690 So. 2d 1207 (Ala. Crim. App. 1996)." Stallworth v. State, [Ms. CR-98-0366, September 28, 2001] ____ So. 2d _____, _____ (Ala. Crim. App. 2001). The trial court made the factual determination that the marijuana was in plain view, and thus was properly seized by the officers and admissible at trial. We cannot, based on the record, find this ruling to be clear error.

Although in Otwell v. State, 733 So. 2d 950 (Ala. Crim. App. 1999), the trial court was reversed for granting a motion to suppress and the standard of appellate review was de novo, this Court's rational in Otwell is applicable to the instant issues, and thus, we quote extensively from Otwell.

> "The following evidence was elicited at the hearing on the motion to suppress. On March 11, 1996, between 11:00 p.m. and 11:30 p.m., narcotics investigator Michael Alexander Salomonsky and investigator John Peterson, of the Madison County Sheriff's Department, were in the parking lot of Chick's Lounge on routine patrol. Salomonsky and Peterson were informed that drug transactions had taken place in the parking lot and Salomonsky had already made several drug arrests in that parking lot. Salomonsky testified that as he was driving through the parking lot he noticed a Nissan pickup truck; a male was standing near the passenger window, leaning in and out of the window of the truck. Salomonsky stopped his car so he could watch. Two males inside the truck appeared to be talking to the male standing at the passenger window. The passenger then placed a white object inside a plastic bag on the dashboard.
>
> "At this point, Salomonsky got out of his car and approached the passenger side of the Nissan pickup truck. As he approached the truck, Salomonsky clearly saw and identified the white substance inside the plastic bag as cocaine. Salomonsky pulled his badge from his shirt, identified himself as a sheriff's deputy, and instructed the male outside the truck and the two males inside the

automobile to put up their hands. The passenger grabbed the bag of cocaine on the dashboard and threw it down on the passenger-side floorboard. Again, Salomonsky instructed all three men 'to put their hands up.' (R. 8.) The passenger complied. However, Otwell, who was in the driver's seat of the truck, did not put up his hands. Otwell appeared to be fumbling in the center console area of the truck. Investigator Salomonsky drew his weapon and Otwell complied with Salomonsky's order to raise his hands.

"After Officer Salomonsky looked in the automobile and saw the cocaine on the floorboard, he made the passenger get out of the automobile, handcuffed him, and gave him to Investigator Peterson. Then, Salomonsky went around the truck and handcuffed Otwell. Salomonsky searched the truck and found two more bags of cocaine in the center area of the truck where Otwell was fumbling before he raised his hands. Salomonsky also found a firearm, a mirror, and a razor blade.

"The trial court granted Otwell's motion to suppress without making any findings of fact. The prosecutor asked the court to state its grounds for granting the motion to suppress. The judge responded 'I don't think there's enough testimony concerning - - let me say this. His type of testimony with respect to how he made this arrest and how he made a determination as to exactly what this substance was, this alleged substance, is not sufficient to make it

admissible at trial.' (R. 20.) Consequently, the trial judge dismissed the case.

"In reviewing a decision of a trial court on a motion to suppress evidence, in a case in which the facts are not in dispute, we apply a de novo standard of review. See State v. Hill, 690 So. 2d 1201 (Ala. 1996); Barnes v. State, 704 So. 2d 487 (Ala. Cr. App. 1997). In this case, Investigator Salomonsky was the only witness who testified at the suppression hearing. Therefore, the facts are not in dispute, but rather, the application of the law to those facts is in dispute. Therefore, we will apply a de novo standard of review.

"The state contends that the trial court erred in granting the defendant's motion to suppress. In support of its position, the state maintains that Investigator Salomonsky's seizure of the cocaine found on the floorboard of the automobile was proper based upon the plain-view exception to the search warrant requirement. The state also contends that the other two bags of cocaine found in the center area of the automobile were properly seized based upon the incident-to-a-lawful-arrest exception to the search warrant requirement.

> "'"This court has long held that warrantless searches are per se unreasonable, unless they fall within one of the recognized exceptions to the warrant requirement. See, e.g., Chevere v. State, 607 So. 2d 361, 368 (Ala.Cr.App. 1992).

> These exceptions are: (1) plain view; (2) consent; (3) incident to a lawful arrest; (4) hot pursuit or emergency; (5) probable cause coupled with exigent circumstances; (6) stop and frisk situations; and (7) inventory searches. Ex parte Hilley, 484 So. 2d 485, 488 (Ala. 1985); Chevere, supra, 607 So. 2d at 368.'"

"State v. Mitchell, 722 So. 2d 814 (Ala.Cr.App. 1998), quoting Rokitski v. State, 715 So. 2d 859 (Ala.Cr.App. 1997).

"In order to decide whether the cocaine was lawfully seized, we must determine whether the elements of the plain-view exception are satisfied. The plain view exception to the search warrant requirement '"permits a warrantless seizure of evidence if the seizing officer (1) has prior justification for the intrusion, (2) comes upon the evidence inadvertently, and (3) immediately recognizes the objects discovered as evidence of wrongdoing."' Smith v. State, 472 So. 2d 677, 682-83 (Ala.Cr.App. 1984), quoting Herrin v. State, 349 So. 2d 103 (Ala.Cr.App. 1977). In 1990, however, the United States Supreme Court abandoned the inadvertent requirement for the plain-view search. Gilbert v. State, 686 So. 2d 266, 267 (Ala.Civ.App. 1996) (citing Horton v. California, 496 U.S. 128, 110 L. Ed. 2d 112, 110 S. Ct. 2301 (1990)).

"In explaining the rationale behind this rule, the United States Supreme Court explained that 'if contraband is left in open view and is observed by a police officer from a lawful vantage point, there has been no invasion of a legitimate expectation of privacy and thus no search within the meaning of the Fourth Amendment – or at least no search independent of the initial intrusion that gave the officers their vantage point.' Minnesota v. Dickerson, 508 U.S. 366, 375, 124 L. Ed. 2d 334, 113 S. Ct. 2130 (1993).

"'"Although an officer may seize contraband which is in plain view without obtaining a warrant, this doctrine applies only when the officer has a legal right to be at his viewpoint."' Duck v. State, 518 So. 2d 857, 859 (Ala.Cr.App. 1987), quoting State v. Morsman, 394 So. 2d 408 (Fla. 1981). Thus, if an officer is in a public place and the contraband is in plain view, the exception is applicable.

"Under the facts of this case, the requirement of justification for the intrusion is satisfied. Investigators Salomonsky and Peterson were in a public parking lot. Because the officers were lawfully in a public place, no invasion of privacy occurred and the intrusion was justified.

". . .

"In a similar case, a police officer inadvertently discovered marijuana in the defendant's automobile. Smith v. State, 472

So. 2d 677, 681 (Ala.Cr.App. 1984). In Smith the third prong of the plain view exception was satisfied because of the officer's experience, and consequently, his ability to identify the object as contraband. Id. at 683. The officer testified that 'in his judgment, this plant material, which was in a "baggie," appeared to be marijuana." Id.

"Under the facts of this case, Narcotics Investigator Salomonsky sufficiently identified the drugs to satisfy the last requirement of the plain-view exception. Salomonsky testified that while he was in his automobile he saw the passenger reach up and place a plastic bag with a white substance inside of the bag on the dashboard. At trial, however, the judge did not allow Salomonsky to testify as to what, in his opinion, the white plastic object was. (R. 7.) Nevertheless, Salomonsky later testified that once he approached Otwell's truck and clearly viewed the object, he immediately believed that the object was 'cocaine wrapped in a piece of plastic.' (R. 8.) Salomonsky was able to identify the white substance as cocaine based on his 'six or seven years experience' in narcotics. (R. 7.) Like the officer in Allen, Salomonsky identified the drugs based on years of experience in this field. Therefore, this last requirement is also satisfied. Consequently, the drugs were in plain view and the first bag of cocaine was legally seized by officer Salomonsky.

"In order to determine whether the two bags of cocaine discovered in the center area

of the automobile were legally seized under the incident-to-a-lawful-arrest exception to the search warrant requirement, we must determine if Otwell's arrest was proper. Section 15-10-3(a)(1), Code of Alabama 1975, provides that '[a]n officer may arrest a person without a warrant, on any day and at any time . . . [i]f a public offense has been committed or a breach of the peace threatened in the presence of the officer.' See also Rule 4.1(a)(ii)., Ala.R.Crim.P. The offense of possession of a controlled substance is defined at § 13A-12-212, Code of Alabama 1975, which provides, in pertinent part:

> "'A person commits the crime of unlawful possession of controlled substance if:
>
> "'. . . .
>
> "'(2) He obtains by fraud, deceit, misrepresentation or subterfuge or by the alteration of a prescription or written order or by the concealment of a material fact or by the use of false name or giving a false address, a controlled substance . . . .'

"As Salomonsky approached Otwell's truck, he was able to identify the white substance as cocaine based on his 'six or seven years experience' in narcotics. (R. 7.) The possession of a controlled substance is explicitly prohibited by Alabama law.

Therefore, Otwell committed an offense under § 13A-12-212, Code of Alabama 1975, and Officer Salomonsky was authorized to arrest him without an arrest warrant pursuant to § 15-10-3(a)(1), Code of Alabama 1975.

"A search incident to a lawful arrest is authorized as an exception to the search warrant requirement. 'When officers lawfully arrest an automobile occupant, they may search the passenger compartment of the automobile as a contemporaneous incident of the arrest, and they also may examine the contents of containers found in the automobile.' United States v. Diaz-Lizaraza, 981 F.2d 1216, 1222 (11th Cir. 1993). Under this rule, once Salomonsky lawfully arrested Otwell, Salomonsky was authorized to conduct a search of his automobile without a search warrant. Salomonsky's search of the automobile that produced two additional bags of cocaine, was legal. Consequently, the additional bags of cocaine were lawfully seized by Salomonsky under an exception to the search warrant requirement."

Otwell v. State, 733 So. 2d at 951-54.

Here, as in Otwell, the evidence at issue (the marijuana) was visible to the officers not as the result of any intrusion upon Savage's privacy but because Savage knowingly exposed the items to public view by placing them in the open bed of his pickup truck and then driving the truck upon the public roads. The United States Supreme Court has held that "[w]hat a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection." Katz v. United States, 389 U.S.

347, 351 (1967). Thus, the trial court's ruling denying the motion to suppress was correct and not an abuse of discretion.

Because the marijuana was properly seized, Savage's claim regarding the seizure of the cocaine from inside his truck is without merit. As in Otwell, the seizure of the cocaine discovered inside Savage's truck was proper pursuant to the search-incident-to-a-lawful-arrest exception to the warrant requirement. See Blake v. State, 772 So. 2d 1200, 1207 (Ala. Crim. App. 2000) (because officers had probable cause to arrest defendant for possession of marijuana, "[t]his arrest would also justify the subsequent search of [defendant's] car").

For the reasons stated above, we find no abuse of discretion with the trial court's denial of Savage's motion to suppress. Thus, Savage's convictions are affirmed.

AFFIRMED.

McMillan, P.J., and Baschab, Shaw, and Wise, JJ., concur.